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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,893	10/24/2003	Kent W. Savage	40059-0008	8706
37526	7590	03/02/2005	EXAMINER	
RADER, FISHMAN & GARAUER PLLC 10653 SOUTH RIVER FRONT PARKWAY SUITE 150 SOUTH JORDAN, UT 84095			SHAY, DAVID M	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 03/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/692,893	SAVAGE, KENT W.	
	<b>Examiner</b>	<b>Art Unit</b>	
	david shay	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on October 24, 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 26-52 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-25, drawn to a light therapy apparatus, classified in class 607, subclass 90.
- II. Claims 26-52, drawn to a method of light therapy, classified in class 128, subclass 898.

The inventions are distinct, each from the other because:

Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case signaling someone.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Kulaniakea Fisher on September 24, 2004 a provisional election was made with traverse to prosecute the invention of group I, claims 1-25. Affirmation of this election must be made by applicant in replying to this Office action. Claims 26-52 stand withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 12, and 19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bamber et al.

Elements 15 and 16 are each light sources.

Claims 1-5, 11, 13, 18-21, and 24 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Marsh.

See figures 3-15; column 1, line 54 to column 4, line 39 and column 8, line 65 to column 12, line 22.

Claims 1-4, 7-13, 19, 21, and 24 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Kuelbs.

See figures 1-4C, 10 and 11; column 1, line 30-60; column 3, lines 49 to column 10, line 68; column 14, line 28 to 65; and column 16, lines 19 to 45.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-6, 13-18 and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitcher et al in combination with Arao et al. Whitcher et al teach a handheld device which outcast a full range of color; has a battery pack; is computer controlled; and is illuminated by a CCFL. Arao et al teach the use of multiple CCFLs and reflectors in a light

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output module. It would have been obvious to the artisan of ordinary skill to employ the output device of Arao et al in the device of Whitcher et al, since Whitcher et al teach no particulars of the output device and since the output device of Arao et al is intended to be employed in this type of device (see Figures 25A-C) or, to employ the device of Whitcher et al as the driver for the output of Arao et al, since Arao et al give no details of the driver device shown in Figures 25A-C and since the device of Whitcher et al is shock resistant and versatile, and in either case to include an inverter, since these are needed for running CCFLs from DC sources, official notice of which is hereby taken, and to employ standard energy saving features, such as a selectable level of screen illumination and a timer that turns off the display after a predetermined time of inactivity, which are notorious in the art, official notice of which is hereby taken, which display controlling will require controlling the inverter, thus producing a device such as claimed.

Any inquiry concerning this communication should be directed to david shay at telephone number (571) 272-4773.



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